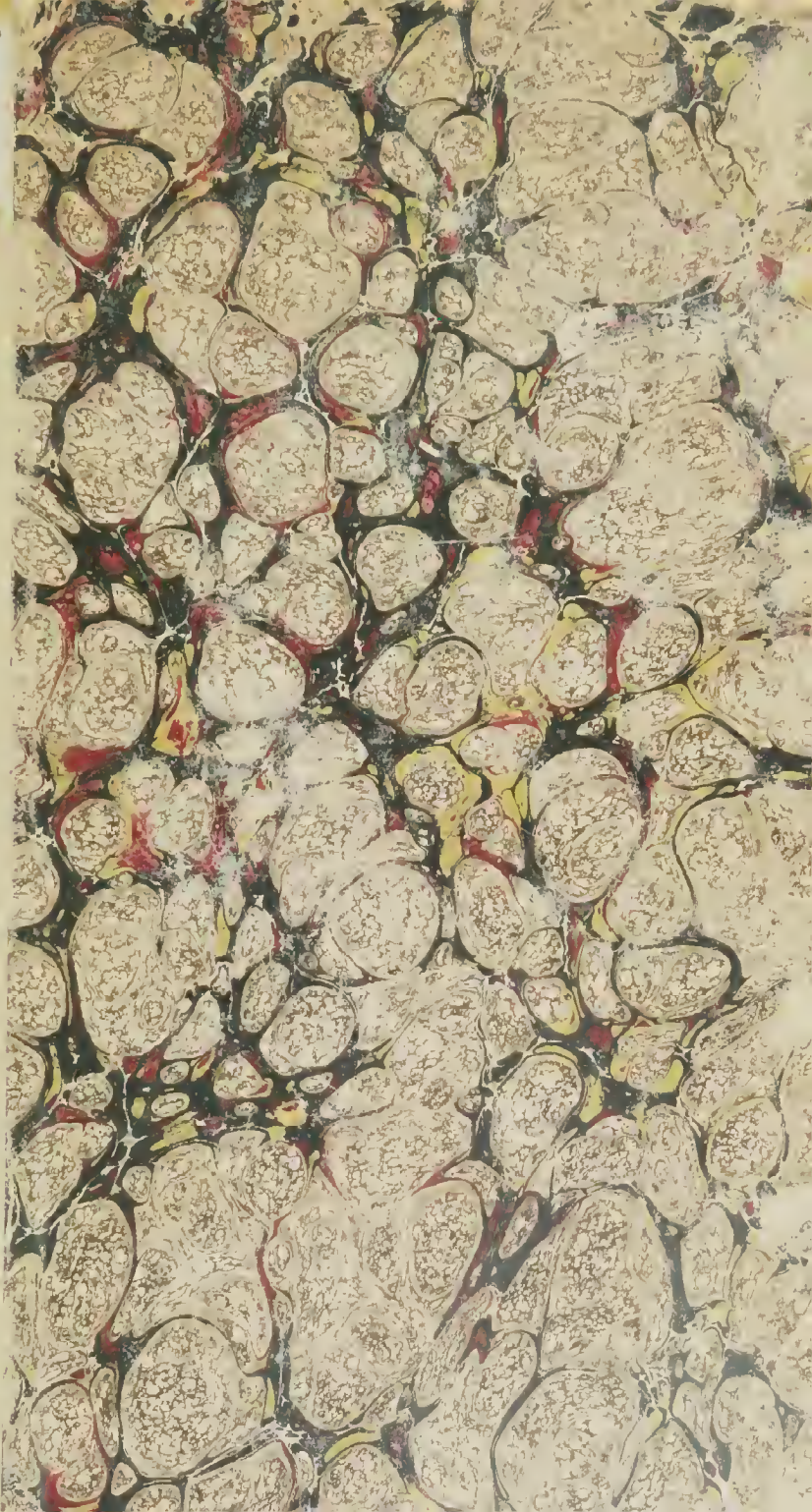


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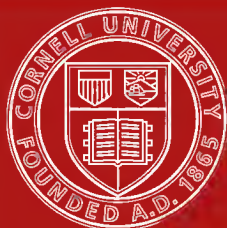
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IN THE
Circuit Court of the United States
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

W. Atlee Burpee, trading as "W. Atlee Burpee & Co.",
a citizen of the State of Pennsylvania,
Complainant,

vs.

"Henry A. Dreer," a corporation of the State of New
Jersey, Defendant.

BILL OF COMPLAINT.

TO THE ABOVE DEFENDANT:

You are required to file a plea, answer or demurrer to the within Bill of Complaint on or before the next rule day, or a decree will be entered.

JAMES B. KINLEY,
JOSEPH DEF. JUNKIN,
JOHN G. JOHNSON,
Solicitors for Complainant

IN THE

Circuit Court of the United States

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. October Sessions, 1907.

IN EQUITY

*W. Atlee Burpee, trading as "W. Atlee Burpee & Co.," a
citizen of the State of Pennsylvania,
Complainant,*

vs.

*"Henry A. Dreer," a corporation of the State of New Jersey,
Defendant.*

TO THE HONORABLE THE JUDGES OF THE SAID COURT:

W. ATLEE BURPEE, trading as "W. ATLEE BURPEE & Co.," a citizen of the State of Pennsylvania, brings this his Bill of Complaint against "HENRY A. DREER," a corporation of the State of New Jersey, and complains and says:

I. Your Orator is a citizen of the State of Pennsylvania, trading as "W. Atlee Burpee & Co.," and is a resident of the Eastern District thereof, and is engaged and has been engaged for more than twenty-nine years in the business of raising and selling seeds for vegetables, grains

and flowers, with his principal office in the City of Philadelphia, State of Pennsylvania. He raises, or has raised for him, such seeds in quantities in various parts of the United States and Europe, either upon his own lands or by contract upon the lands of others, and especially grows and tests such products at his main farms in Bucks County, Pennsylvania, which were named by him at the time of purchase of the first farm, about twenty years ago, "FORDHOOK," and which name of "FORDHOOK" he adopted, and has continuously used since then, as his trade name for the most important and new varieties of such products, he having made a specialty for many years of discovering, purchasing, cultivating and distributing, to seed planters throughout the world, such new and improved varieties of the said seeds, some of the most important of which new and improved varieties of seeds have been put out by him to the trade under the name "FORDHOOK."

During all of these years he has carried on a very large and increasing general distributing business for such seeds, throughout the United States and the world at large, under the trade name "**FORDHOOK**" [see pages 11 and 26 of Exhibit "C"].

II. The defendant, "HENRY A. DREER," is a corporation of the State of New Jersey, incorporated in the year 1892, and authorized to carry on the same general business as that conducted by your Orator, and has so conducted the same since the said date, with its principal business office and store in the City of Philadelphia and State of Pennsylvania.

III. For over twenty years past, it has been the annual custom of your Orator to issue a large and handsomely illustrated Catalogue, describing the various seeds and other products which he had for sale, and calling special attention to some of the most important of such new and

improved varieties as he puts out, from time to time, under the name "FORDHOOK," and distributing such Catalogues without cost to the public, but at great expense to himself, throughout the United States, Canada, the West Indies, Central and South America, Europe, Asia, Australia and New Zealand.

Your Orator has spent annually for more than ten years past, and is now spending, upwards of \$50,000—last year upwards of \$75,000—in so advertising his business, both by means of such Catalogues, and by advertisements in magazines and periodicals, repeatedly using the trade name of "FORDHOOK" therein, as specially applied to these new and unusual developments of the said seed products so procured and first offered to the public by himself alone; and he has also spent large sums of money in buying up, cultivating, and calling to the attention of the public, and procuring a market for, these new and unusual forms of seeds for vegetables and flowers.

IV. In connection with the averments of paragraph III., your Orator avers that more especially in the year 1906 he purchased from one Henry Fish, of California, who was and is an extensive grower of lima beans, a new and unusual type of lima bean seed, which had been discovered by the said Fish, the same being what is known as a "Sport" in trade nomenclature, such word being descriptive of an unique and unforeseen result of seed cultivation. One plant of this "Sport" lima bean was discovered by the said Fish in 1903; was secretly and privately cultivated by him until its success was assured, when he sent notice of his discovery to your Orator and various of the latter's competitors, including "Henry A. Dreer," the Defendant, as your Orator is informed and believes and avers, and bids were asked from such seed distributors by the said Fish for the purchase of this newly discovered type of Bush lima bean. Your Orator's bid to the said

Fish was the largest sum offered, and resulted in his entering into a contract with the discoverer thereof to purchase all of such seed which had been up to that date produced by him, and by which your Orator was given the sole and exclusive right to such bean, identified in such contract as No. 1, and thereby said Fish agreed to continue to grow such bean for your Orator at a fixed price, but not to grow the same thereafter for himself or for others from the said seed which your Orator had so purchased, and a considerable portion of which he left with the said Fish to propagate for him under the terms of the said Contract: [a copy of such Contract is filed herewith and made part hereof, marked "Exhibit A"].

Your Orator paid to the said Fish the \$1,000 first cash payment mentioned in such contract, and also paid to him during the year 1907 the additional sum of \$348.; and has entered into a contract with the said Fish to pay to him during the year 1908 seven cents per pound for his entire crop of such seed, grown in 1907, estimated at 18,000 pounds, together with an extra bonus of \$125., making a total obligation upon your Orator to pay to the said Fish during the year 1908, the additional sum of \$1385.

Your Orator named such lima bean the "FORDHOOK BUSH LIMA BEAN", and during the year 1907 expended in advertising the same in the manner aforesaid, under this name "FORDHOOK BUSH LIMA BEAN," a sum not less than \$5,000.; and has prepared, and is now putting out, his Catalogues and other advertisements for the year 1908 of the same novelty, among other things, which special advertisement will aggregate, for it alone, the same approximate sum for the year 1908; and such Catalogues are already printed and now largely distributed; [copies of all of which are filed with this Bill, and made part hereof and marked "Exhibits C, D and E."]

This bean is an unusual bean, growing upon a plant of

a stiffly upright growth, in place of lying prostrate upon the ground, as does the only other type of potato bush lima bean. This bush averages from twenty to thirty inches in height, withstanding rains and winds, and produces a crop from twenty-five to thirty-three and one-third per cent. heavier and larger than any previously existing type of potato bush lima upon the market, while both pods and beans are double the size, and the bushes produce an unusual number of pods, with an unusual number of beans of an improved and desirable flavor. The flavor of this new and unique "FORDHOOK BUSH LIMA BEAN" is distinctly different from that of any other existing type of the so-called potato lima, either bush or pole.

V. After your Orator had purchased these seeds from the said Fish, and after having tested the same at his Fordhook Farms, he continued such tests at the same place, and also caused the beans to be grown for him by the said Fish in California from the seed so purchased by him from Fish under the said contract (Exhibit "A"); and he advertised the same in his Catalogue for the year 1907 as "FORDHOOK BUSH LIMA BEAN", for sale in small packets, each packet containing but twelve good hand picked beans, at the large price of twenty-five cents per packet, or five packets for \$1.00, so as to limit the possibility of the cultivation of the same to any extent for seed purposes, beyond that controlled by himself. This name of "FORDHOOK BUSH LIMA BEAN" never before was made public by any one as descriptive of this bean; and in such Catalogue of 1907, he gave to this article two full pages of advertisement, with expensive cuts thereof. [vide pages 12 and 13 of a copy thereof marked "Exhibit B", filed herewith and made part hereof, and also further descriptions and illustrations of same, pages 10 and 11 thereof; while, on page 199, more than \$500.

in cash prizes were offered for the best bushes and pods that might be produced in 1907, and the best reports as to the value of this unique "FORDHOOK BUSH LIMA BEAN," which prizes have since all been paid by your Orator.]

This Catalogue was issued in an edition of about 318,000 copies, and distributed throughout the United States and the before mentioned countries, at an expense of more than \$40,000, while in the Catalogue for Market Gardeners ["Exhibit E"], the pods of this new "FORDHOOK BUSH LIMA BEAN" are shown, printed in colors on page 14, and natural size fresh beans on the last cover page. Of this "Market Gardeners Catalogue", more than 17,000 were distributed at an additional expense of more than \$2,000.

All of this advertising and preliminary work was done for the purpose of introducing this novelty to the seed planters of the world, in limited quantities, to insure a future demand and trade therefor, and also to generally enhance the value, or good-will of your Orator's business, under his well recognized trade name of "FORDHOOK".

During the year 1907, your Orator made actual cash sales of this seed, disposed of in this way, to the amount of barely \$3,000., looking to future years for the money return from the large investment, heretofore set forth in introducing this novelty to the public.

During the Fall of 1907, your Orator prepared and has published the first edition of 300,000 of his main retail Catalogue for 1908 ["Exhibit C"], of which 95,000 copies have already been distributed, and the remainder are about to be sent out. In this Catalogue, three pages are again devoted to this same "FORDHOOK BUSH LIMA BEAN," with handsome cuts, and with full description thereof [see pages 6, 7 and 24], while the front cover shows, reproduced by lithograph in color, one bush and two natural size pods. In addition to this, your Orator

has had printed, and is distributing, 160,000 smaller Catalogues, in which more than two pages are devoted to illustrations and descriptions of this "Fordhook Bush Lima Bean", including natural size pods, reproduced in color, on the last cover page [Exhibit "D"]. These two retail Catalogues, together with the Market Gardeners Catalogue for 1908, (now in press), will cost over \$40,000.; and your Orator, from his past experience of the result of such advertising and from his knowledge of results of the same to other dealers in the same line of business, has reason to believe that he will receive from such advertising during the year 1908, a very large and lucrative business, resulting from the sale of such seed throughout the world, greatly exceeding the sum of \$2,000.

VI. Your Orator has received from the Defendant a copy of its Catalogue for the year 1908 [a copy of which is filed herewith and made part hereof marked "Exhibit F"], and he has been informed by others and believes and avers that they have received similar copies of such Catalogue; and he is informed, and believes and avers, that the same has already been quite widely distributed to the seed planters by the Defendant; and wherein, upon page 27, is offered and described a lima bean which the Defendant offers to the public under the title "PERFECTED DREER'S BUSH LIMA BEAN (Fordhook)." This is accompanied by a large illustration, facing page 27, where the same name occurs, under the illustration, "PERFECTED DREER'S BUSH LIMA BEAN (Fordhook)," and this bean is described on page 27 of said Catalogue as follows:

**"PERFECTED
"DREER'S BUSH LIMA BEAN.
"(FORDHOOK).**

"This new strain of Dreer's Bush Lima Bean was
"found growing in a crop of Dreer's Improved Pole

"Limas by Mr. Henry Fish, an extensive grower of
 "Lima Beans in California. The upright character
 "of the plant and extremely large size of Beans im-
 "pressed him with its great value if these charac-
 "teristics would remain fixed. The Beans were
 "carefully planted the following year, with the
 "result that it not only retained these conditions, but
 "proved to be earlier and more productive than the
 "ordinary strain of this variety, and after several
 "years of growing and selecting it has been offered
 "to the public. The illustration of plant, also pod
 "natural size, shown opposite, gives an idea of the
 "dwarf, stiff, upright growth and unusually large size
 "of Beans. These, together with earliness and
 "delicious quality, make this new strain of Dreer's
 "Bush Lima a great improvement over all other
 "varieties of Bush Lima Beans.

"The Dreer type of Lima Bean has long been
 "acknowledged to be the best, and we are pleased
 "to state that its origin was with Dreer's Improved
 "Pole Lima, which originated in Pennsylvania and
 "was introduced by us in 1875. The same Bean
 "was re-named Challenger Pole Lima, and in 1882
 "was sent out by the San Francisco Bulletin as a
 "premium to subscribers.

"The next important improvement was the Bush
 "type which was sent out in 1889 under the name of
 "'Kumerle" Bush Lima, later improved and sent
 "out by us as Dreer's Bush Lima, by which name it
 "has become better known than any other variety
 "of Bush Lima Bean.

"The Perfected Dreer's Bush Lima is a further im-
 "provement which will be greatly appreciated by all
 "who plant it. Our supply of the seed is limited,
 "but we are pleased to be able to offer it to our cus-
 "tomers. Pkt., 15 cts.; $\frac{1}{4}$ pint, 40 cts.; $\frac{1}{2}$ pint, 75
 "cts.; pint, \$1.25."

VII. Your Orator avers that it was his intent to have offered the said "FORDHOOK BUSH LIMA BEAN" to the wholesale trade at large, so that those firms that desired to do so, could catalogue and offer for sale at retail the "FORDHOOK BUSH LIMA BEAN" for 1908. Your Orator having been advised, however, by the grower, Henry Fish, that owing to a rainy season the crop might be a short one, did not offer this variety to such trade. Four houses, however, viz., Messrs. C. C. Morse & Company, of San Francisco, California; Arthur T. Boddington, of New York; the "Johnson Seed Company", of Philadelphia, and the defendant, "Henry A. Dreer", of Philadelphia, urgently solicited as a favor from your Orator that he would allow them to catalogue said variety of "FORDHOOK BUSH LIMA BEAN," and all assured your Orator that they would offer them at whatever retail price your Orator would fix. So solicited, and upon such condition, your Orator granted this permission to the said four Catalogue Houses, and to no others. In response to such acquiescence given by him to the Defendant, it replied by letter dated December 3, 1907, as follows:

"We thank you for your offer of the two Bush Lima Beans. We however, will only catalogue the one variety this year, and we ask that you enter our order for two bushels of the Fordhook Bush Lima at price quoted, \$45.00 per bushel. We will offer the bean in the quantities and at prices named in your letter. We would appreciate it however, if you would give us an idea as to size your packet will be as we desire to conform with same."

Your Orator avers that in the Catalogue of the said Defendant, referred to in Paragraph VI hereof ["Exhibit F"], the name "FORDHOOK" does not appear anywhere, excepting in the before mentioned announcement of the

Defendant, page 27 thereof and on the illustration facing said page, nor does the name "FORDHOOK BUSH LIMA BEAN" occur anywhere therein.

VIII. Your Orator has not yet seen the Catalogue for 1908 of Messrs. C. C. Morse & Company, but has received from them a telegram, dated January 14, 1908, stating that they have Catalogued the bean as "FORDHOOK BUSH LIMA BEAN." He has seen the catalogue of the said "Johnson Seed Company" [which is filed herewith and made part hereof, marked "Exhibit G"]. On page 4 thereof, "FORDHOOK BUSH LIMA BEAN" is offered under its proper name, printed in large type, said name being repeated four times in bold face capitals. The following page is devoted entirely to a description of your Orator's other new Lima "THE BURPEE IMPROVED BUSH LIMA BEAN," under its proper title, which was the other Lima bean procured by the said "Johnson Seed Company" from your Orator. On page 12 of said Catalogue "BURPEE'S NEW FORDHOOK MUSKMELON" is offered by the said "Johnson Seed Company" in like manner, under the name given it by your Orator, the seed of which variety was supplied by him to the said "Johnson Seed Company." Your Orator has also seen the Catalogue for 1908 of the said Arthur T. Boddington [a copy of which is filed herewith and made part hereof, marked "Exhibit H"], wherein upon page 49 this "FORDHOOK BUSH LIMA BEAN" is catalogued under its proper name.

IX. Your Orator has been in the seed business under the present firm name for more than twenty-nine years, and has never known an instance in which he, or any other house in the trade, had supplied seed of their new variety, wholesale, to any competing house for the purpose of their cataloguing the same, and offering it for sale at retail, and such competing houses thereafter either re-naming

the variety so offered in its catalogue, or claiming it as its own variety.

Your Orator avers that it is the custom of the seed trade, that, when a seed grower or distributor has discovered a new or improved variety of seed, which had not theretofore been cultivated and distributed to seed planters, or has purchased the exclusive right thereto; and has cultivated, or caused to be cultivated, the same in quantities for the market for seed distributing purposes; and has announced to the trade the discovery, and put it out upon the market, and offered the results for sale under his Trade Name, or any Special Name which he chose to designate it by, it was recognized by the seed trade at large, that he thereby acquired a proprietary right to have such trade name, or designated name, recognized as the name of such seed or such variety, and that anyone else who purchased the seed from him for the purpose of offering same for sale should catalogue such variety, or offer it for sale, only under the name given to it by the introducer.

X. Your Orator further avers that such custom, and recognition thereof by the seed trade, forms a very large and valuable part of the assets and good-will of all of those growers and distributors who pay special attention to the production, or distribution, of new and improved varieties of vegetables, flowers and grains; and that the recognition of such custom forms a large and inducing part of the consideration for the undertaking of the work, and the great expense, to which such producers and distributors are put in their work of investigating, cultivating, producing and distributing such new varieties for the benefit of the country at large in varying its food products, and advancing the interests of Horticulture and Agriculture.

Your Orator further avers, that the expense attending such investigation and production of new and improved

varieties of seeds, is so great, that, without the protection of such trade custom and the recognition thereof, as heretofore afforded, such work would largely cease, and it would become impossible, for manifest financial reasons, for seed producers and distributors to attempt to place upon the market such new and improved varieties of the said seed.

XI. Your Orator avers that the Defendant did not discover nor produce, nor has it any rights under the aforesaid custom of the trade in the "FORDHOOK BUSH LIMA BEAN," so placed upon the market in the year 1907 by your Orator, excepting in so far as it may procure such seed from your Orator in the ordinary course of business, as would be the case with any other purchaser thereof, and that it has no right to offer the same for sale to the public under its own name or any other name than that given to it by Complainant; and that its attempt, as shown by its Catalogue for 1908 [Exhibit "F"], to induce the public to believe that this bean was its discovery, or to purchase from it the "FORDHOOK BUSH LIMA BEAN" as its discovery, or its property, as disclosed by its description of the same in the aforesaid Catalogue [page 27], under the name "PERFECTED DREER'S BUSH LIMA BEAN (Fordhook)", as well as its appropriation of Defendant's trade name of "FORDHOOK" in connection therewith, without your Orator's permission, constitutes a gross infringement of your Orator's rights, not only as a violation of the aforesaid custom of the trade, but also of such use of said trade name; and that the same is a gross attempt to endeavor to appropriate the trade and custom of your Orator, and obtain the benefit for itself of the large sums of money before mentioned as expended by your Orator in introducing and making known to the seed trade at large, this new and improved variety of Bush Lima Bean; and an attempt, either to induce those who have been in the habit of purchasing from your Orator, and particularly

those who have purchased this "FORDHOOK BUSH LIMA BEAN" in 1907, to buy from the Defendant Bush Lima Beans, of its own growth or culture, which it endeavors, by such advertisement, to induce the public to believe are your Orator's "FORDHOOK BUSH LIMA BEAN," the right to rename which it has in some way acquired; or that it is a renaming of the identical bean of your Orator by the Defendant under the name "PERFECTED DREER'S BUSH LIMA BEAN" which bean is claimed by it in such advertisement as its own, contrary to such trade custom, and that the beans which it expects to sell to its customers are your Orator's said "FORDHOOK BUSH LIMA BEAN" which it has contracted as aforesaid to purchase from your Orator for the purpose of cataloguing and selling, as shown by its aforesaid letter, and which it hopes to procure from your Orator in quantity in the future; and your Orator avers that such Catalogue of the said Defendant, containing such statements, and such appropriation of your Orator's Trade Name, and such description of this bean, has been so issued and distributed, and will be distributed by the Defendant unless restrained therefrom, so as to endeavor to mislead the public into the belief that the Defendant is the owner of such seeds or beans, and in some way controls this "FORDHOOK BUSH LIMA BEAN," so as aforesaid the property of your Orator; and is a gross violation of the aforesaid custom of the trade, and an unlawful appropriation of your Orator's purchased discovery aforesaid.

XII. Your Orator has been informed, and believes and avers, that the Defendant has already sent out to the general public, many thousands of its said Catalogue, containing this advertisement of these Bush Lima Beans, and that it has many thousands more of the same ready to send out, and which it contemplates sending out in the immediate future to the trade.

XIII. Your Orator avers that such action has been, and will be, greatly detrimental and injurious to the business of your Orator, in his said trade as aforesaid, and that he has already sustained, by reason thereof, great loss, and will sustain much greater monetary loss, in a sum or value which exceeds \$2,000., exclusive of interest and costs, as to which he has no adequate remedy at law, and an incalculable loss in trade prestige and good-will, if the Defendant is not restrained by injunction from so using your Orator's trade name "FORDHOOK" in connection with the advertisement of his alleged "PERFECTED DREER'S BUSH LIMA BEAN (Fordhook)"; and from using the said name "FORDHOOK" in connection with any advertisement he may make of said Bush Lima Beans, excepting in the said form devised by your Orator—to wit "FORDHOOK BUSH LIMA BEAN;" and from renaming your Orator's said "FORDHOOK BUSH LIMA BEAN," and from selling the same under the name of "PERFECTED DREER'S BUSH LIMA BEAN," or any other name than the name given to it by your Orator.

XIV Your Orator avers that he is entitled to the sole and exclusive use of the trade name "FORDHOOK", and to all the benefits accruing therefrom; and is entitled, under the said custom of the trade, to the sole and exclusive benefit to be obtained from the distribution and sale of such new and improved Bush Lima Beans, under such title of "FORDHOOK BUSH LIMA BEAN", wherever and by whomsoever the same may be sold; and that the Defendant has unlawfully trespassed upon the said rights of your Orator; and that not only is your Orator entitled to have it restrained from so further trespassing; but also that he is entitled to have a mandatory injunction issue against it, compelling it to destroy such of said Catalogues containing the aforesaid matter complained of, as it has not already issued; but also compelling it to send for, collect and destroy such copies thereof as it

has already issued; and that he is also entitled to a Decree for the damages sustained by him by reason of what has been so unlawfully done in the premises by the Defendant.

WHEREFORE he needs equitable relief, and prays:

1. That an injunction, special until hearing, and perpetual thereafter, be granted restraining the Defendant, its officers, agents, employees and servants, from in any way using the Complainant's trade name "FORDHOOK" in connection with its own alleged products; and more especially from continuing the use of the same in its Catalogue entitled "DREER'S GARDEN BOOK 1838-1908", wherein it describes and offers for sale "PERFECTED DREER'S BUSH LIMA BEAN (Fordhook)"; and further restraining the Defendant from offering for sale the Complainant's said bean or its product under any other title than "FORDHOOK BUSH LIMA BEAN".

2. That a mandatory injunction issue commanding the Defendant to destroy such of said Catalogues as it has not already distributed; and that it be further commanded, by every means in its power, to send for and recover back such copies of the same as it has already distributed, and that such Catalogues, when so recovered, be destroyed.

3. That an accounting be required from the Defendant for the damages sustained by the Complainant by reason of the aforesaid unlawful acts of the Defendant, and that when the amount of the same be ascertained, a Decree be entered against the Defendant requiring it to pay to the Complainant the amount so ascertained to be due.

4. General relief.

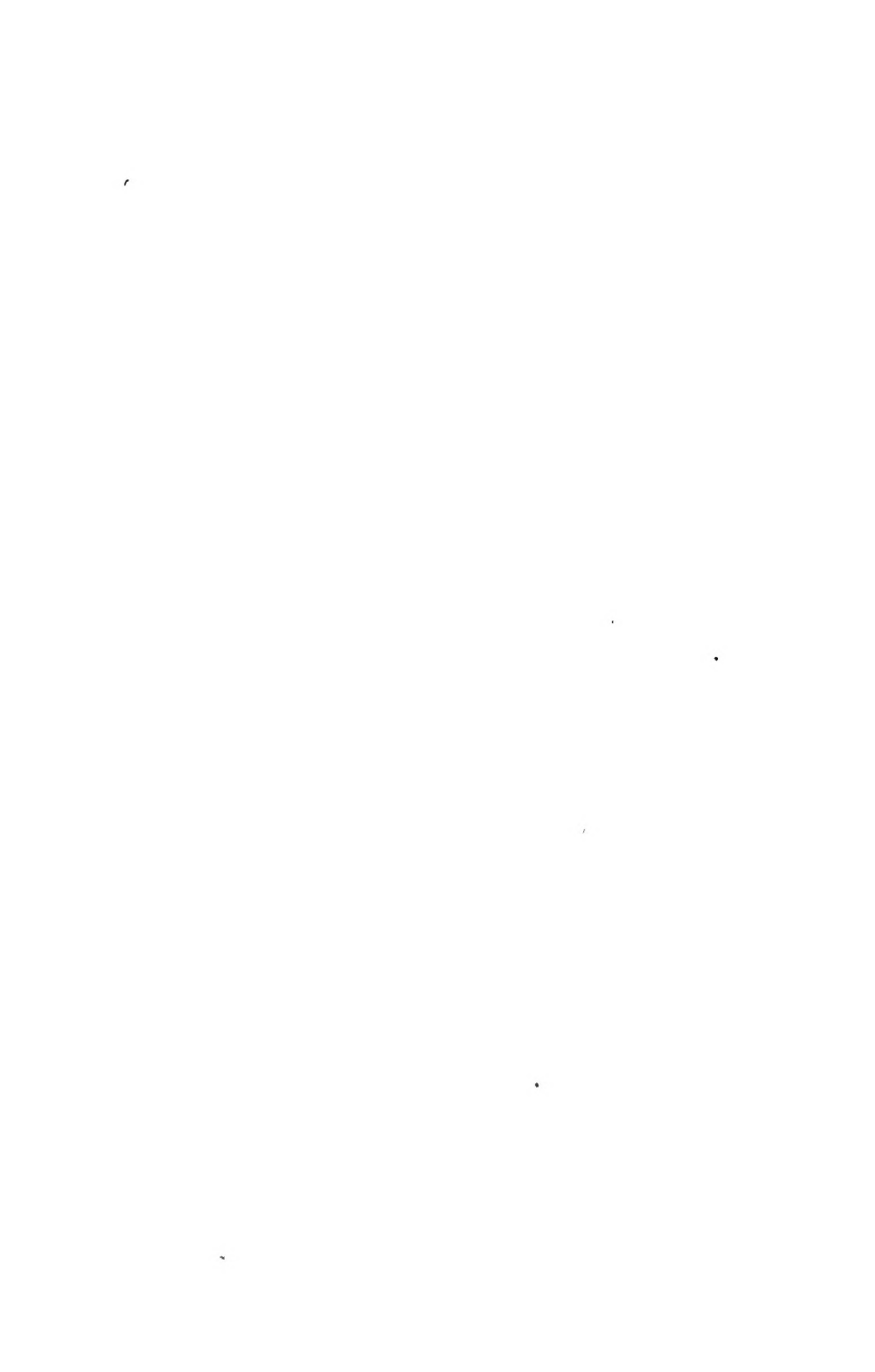
W. ATLEE BURPEE,
Trading as W. Atlee Burpee & Co.

JAMES B. KINLEY,
JOSEPH DE F. JUNKIN,
JOHN G. JOHNSON,
Solicitors for Complainant.

STATE OF PENNSYLVANIA,
CITY AND COUNTY OF PHILADELPHIA } ss:

W. ATLEE BURPEE, being duly affirmed, says: I am the Complainant above named, and the facts set forth in the foregoing Bill of Complaint are true to the best of my knowledge, information and belief.

Affirmed and subscribed to }
before me, this day }
of January, A. D. 1908. }



IN THE
Circuit Court of the United States for the
Eastern District of Pennsylvania.

IN EQUITY.

W. ATLEE BURPEE, TRADING AS W. ATLEE BURPEE
& CO., A CITIZEN OF THE STATE OF PENNSYLVANIA,

vs.

HENRY A. DREER, A CORPORATION OF THE STATE
OF NEW JERSEY,

STATE OF PENNSYLVANIA, }
CITY AND COUNTY OF PHILADELPHIA, } ss.

WILLIAM F. DREER being duly sworn says: I am the President of "Henry A. Dreer" the defendant, which company was an incorporation of the well known firm of Henry A. Dreer, founded by my father, Henry A. Dreer, in the year 1838 and which said firm has always been held in the highest esteem both by the trade and the public in general.

Prior to its incorporation in 1892, I was connected with said firm for a period of 27 years.

In the year 1875 the said firm of Henry A. Dreer introduced and listed in their Garden Calendar for that year Dreer's Improved Lima Bean, which was much thicker than the ordinary bean then in use and said fat or thicker type of lima bean has since that time been generally known among growers, seedsmen and individual growers as the Dreer type of bean.

In the year 1891 they introduced the Dreer Bush Lima Bean and the bean introduced last year by the complainant under the name of "Fordhook" is of the same fat type, flavor and

characteristics as the Dreer type and is a perfected form of the Dreer Bush Lima in that the bush is stiffer and the bean somewhat larger.

That "Henry A. Dreer" purchased early in 1907 from W. Atlee Burpee & Co. 1000 Packets of said Fordhook beans at a cost of \$200 which were sent to a grower in California to grow for the said house of Henry A. Dreer and by said grower a crop was secured which was not considered sufficiently large for their purposes. The said Henry A. Dreer entered into a contract with complainant whereby the latter agreed in writing to furnish two bushels of said Fordhook bean and in violation of their contract refused to deliver same; that no restriction whatever was made as to the method in which said seed should be listed; excepting as to price; that said Henry A. Dreer have listed said bean in but one of their publications or catalogues viz the "Garden Book" for 1908, being complainant's Exhibit F, and in said book said bean was described as a perfected form of Dreer's Bush Lima, which it is in fact and the name Fordhook was also added in order that credit should be given to its introducer.

I further aver that the descriptive words "Perfected Dreer's Bush Lima" was given to inform the public and particularly the special customers of the Henry A. Dreer Company, that the Fordhook Bean was a variety of the well known Dreer Lima Bean.

I further aver that in said catalogue there was no attempt to violate any alleged right of complainant or any custom of trade universal or special.

I also aver that it is a common practice among seedsmen to purchase seed from the introducer of a new type of vegetable, grow the same and thereafter sell the product of the seed so purchased without regard to the name given thereto by the introducer and often under a different name and the catalogues of a number of leading seedsmen for the year 1908 and the Bulletins issued by the United States Department of Agriculture clearly show this fact.

A particular illustration of this fact is shown on page 45 and 149 of Defendant's Exhibit A, being Government Bulletin No. 109 wherein it appears that the "Wonder Bush Lima" was introduced in 1898 by Henry A. Dreer as "Dreer's Wonder Bush Lima" and that the same variety was introduced by complainant W. Atlee Burpee & Co. in 1901 under the name of "Burpee's Quarter Century Bush Lima."

I further aver that I have read the affidavits filed in this suit in support of complainant's motion for injunction and aver that there is no universal custom as is therein alleged, and I further aver that as a matter of fact the seed of complainant was actually offered for sale under the name given to it by him viz "Fordhook" in the said catalogue Exhibit F, and that the descriptive words attached thereto was a statement of fact which is borne out by the various statements and testimonials contained in complainant's Exhibits and more particularly by the statement of Henry Fish, the discoverer of this variety when he first offered it for sale to the trade and described it as follows:

"The beans and pods have the same general shape of the Dreer Bush Lima Bean but are considerably larger . . . and have the flavor of the Dreer's Bush."

I further aver that the said Henry A. Dreer has had printed an edition of 100,000 copies of their Garden Book for 1908, "Exhibit F." at an expense upwards of \$20,000 and that said book or catalogue contains 248 pages describing the various seeds and plants offered by said Henry A. Dreer and that only upon three of these 248 pages is there any mention of the "Fordhook" bean; that said book is now being distributed to all parts of the world; that prior to the filing of the bill of complaint a large number of these catalogues were distributed to all parts of the world and requests are now daily being received from customers who desire to plant early and I therefore aver an injunction restraining the distribution of this catalogue at this time of year would cause an irreparable loss to defendant.

I further aver that no orders for seeds of the Fordhook or Perfected Dreer's Bush Lima have been filled and that if the whole amount of said beans now owned by Henry A. Dreer which were produced from seed purchased from complainant was actually sold the receipts therefrom would not amount to \$300, and therefore, if by any possibility it could be shown that complainant's sales should be correspondingly decreased, the loss occasioned thereby would be trifling compared with the serious loss that would follow the granting of an injunction such as is prayed for.

I further deny that by the publication and distribution of "Exhibit F" the complainant has been or is likely to be injured in any way and I further deny that there has been any unlawful use of the word "Fordhook" or that there was any attempt to sell a different product under that name.

I aver further that defendant "Henry A. Dreer" has not violated any custom of trade; that I am advised, believe and therefore aver that it has violated no legal right of complainant and that complainant is not entitled to the relief prayed for.

Sworn and Subscribed before
 me this day of
 January 1908.

IN THE

**Circuit Court of the United States for the
Eastern District of Pennsylvania.**

IN EQUITY.

W. ATLEE BURPEE, TRADING AS W. ATLEE BURPEE
& CO., A CITIZEN OF THE STATE OF PENNSYLVANIA,

vs.

HENRY A. DREER, A CORPORATION OF THE STATE OF
NEW JERSEY,

STATE OF
COUNTY OF

} ss:

GEORGE D. CLARK, being duly sworn, says: I am a Director of the defendant corporation Henry A. Dreer, and have been engaged in the seed business for 30 years, and am conversant with the customs and usages of said business throughout all of the United States.

I aver that I have read the affidavits filed by complainant wherein it is averred that it is the universal custom of all persons engaged in the seed business to recognize the proprietary right of the introducer or owner of a new variety of seed and that it is the universal custom for all other dealers thereafter to sell the same under the name given thereto by such introducer and owner, and I deny that there is any such universal custom, and aver that I have examined with care the catalogues for the year 1908 of twenty of the leading seed houses of the United States, viz.: Burpee, Maule, Dreer, Stokes, Johnson, Buist, Michell, Henderson, Thorburn, Weeber & Don,

Boddington, Breck, Scjlegel & Fottler, Rawson, Vick, J. Chas. McCullough, J. M. McCullough, Ferry, Beckert and Holmes, and have taken fourteen separate varieties of vegetables that have been listed in one or more of said catalogues, and find that in fifty-seven cases the introducer was given credit and in one hundred and eighty-nine cases he was not given credit.

I also aver that the use of the word Fordhook in the defendant's Garden Book did give credit to said complainant, and the other words "Perfected Dreer's Bush Lima" were descriptive in character and contained a statement of fact: that complainant's Farm Annual for 1908, complainant's Exhibit C., on page 83 contains an example of an exactly similar use of the trade name of a competitor; viz.: "Norfolk Savoy Leaved (Bloomsdale)" which is a description of a spinach offered for sale by said complainant, and aver that the words "Norfolk Savoy Leaved" are given by complainant to a spinach introduced by the rival firm of Landreth under the name of "Bloomsdale," that being the name of the farm of said Landreth.

Sworn and subscribed before
me this 31st day of
January, 1908.

IN THE

**Circuit Court of the United States for the
Eastern District of Pennsylvania.**

IN EQUITY.

W. ATLEE BURPEE, TRADING AS W. ATLEE BURPEE
& CO., A CITIZEN OF THE STATE OF PENNSYLVANIA,

vs.

"HENRY A. DREER," A CORPORATION OF THE STATE OF
NEW JERSEY,

STATE OF PENNSYLVANIA, }
COUNTY OF BERKS } ss.

W. F. MASSEY, being duly sworn, says, I have been engaged in horticultural work for more than forty years, both commercially and as professor of horticulture in the North Carolina College of Horticulture and Mechanical Arts, and as horticulturist for the North Carolina Agricultural Experiment Station, which latter position I have filled for sixteen years. I have been acquainted with leading seedsmen of this country, and am familiar with the methods of the trade, and aver that there is no universal custom on the part of seedsmen to offer for sale and to sell a new and improved type of vegetable or plant under the name given thereto by the original discoverer or owner, but that it is a common practice for seedsmen to give new names to old varieties of vegetables and flowers, and as an example of that practice I would state that there is a large variety of Extra Early Peas to which seedsmen

give their special names, but all of which are selections from or the product of the Early Kent or Daniel O'Rourke. That in 1876 a verbenia was originated by a florist named John Garvin of Baltimore, Maryland, to which he gave the name "John," and that this identical flower was subsequently brought out by a leading florist of New York under the name of "Beauty of Oxford," without any mention of its originator or the original name. I further aver that one W. H. Maule, a seedsman of Philadelphia, last year catalogued a variety of the Southern Field or Cow Pea under the name of "Revenue" which pea has been known theretofore as "Brown Crowder" and also as "Michigan Favorite." That I am very familiar with the form of lima bean introduced by Henry A. Dreer in 1875 as "Dreer's Lima" and said bean has been universally known to the trade under that name, and its chief peculiarity is its thickness or chubby form. This same bean was further developed and later known as "Dreer's Bush Lima" and was of the same type as the old Dreer's Lima. I have not grown the "Fordhook" brought out by the complainant, but I am acquainted with the same, and it is well known that the said Fordhook belongs to the same strain that has been for so many years known as Dreer's Bush Lima, of which it is a further improvement.

Sworn to and subscribed	}	W. F. MASSEY.
before me this 29th day		
of January, A. D., 1908.		

HENRY S. CLAUSER,
Justice of the Peace.

My Commission expires Monday, May 2d, 1910.

IN THE
Circuit Court of the United States for the
Eastern District of Pennsylvania.

IN EQUITY.

W. ATLEE BURPEE, TRADING AS W. ATLEE BUR-
PEE & CO., A CITIZEN OF THE STATE OF PENNSYL-
VANIA,

vs.

"HENRY A. DREER," A CORPORATION OF THE STATE OF
NEW JERSEY,

STATE OF VERMONT }
COUNTY OF CHITTENDEN } ss:

WILLIAM STUART, being duly sworn says, I am the horticulturist of the Vermont Agricultural Experiment Station, and have had many years experience in testing Seeds offered by the different seedsmen. I am conversant with the customs and usages of the said business throughout the United States.

I aver that it is a matter of common knowledge that seedsmen, plantmen and nurserymen do catalogue varieties under other names than those under which they were first sent out.

That there is no universal custom to offer for sale and to sell any new and improved type under the name given thereto by the original discoverer or owner thereof without change of name.

Sworn and subscribed before me }
this 27th day of January, }
1908. } WM. STUART.

MAX L. POWELL,
Notary Public.

IN THE
**Circuit Court of the United States for the
Eastern District of Pennsylvania.**

IN EQUITY.

W. ATLEE BURPEE, TRADING AS W. ATLEE BURPEE
& CO., A CITIZEN OF THE STATE OF PENNSYLVANIA.

vs.

HENRY A. DREER, A CORPORATION OF THE STATE OF
NEW JERSEY.

STATE OF MARYLAND, }
CITY OF BALTIMORE. } ss.

CHARLES R. STENGEL being duly sworn says: I am the Seedsman of the Griffith and Turner Co. who are engaged in the business of growing, buying and selling seeds of vegetables, grain and flowers in the City of Baltimore, State of Maryland, and I have been so engaged with them for a period of twelve years, and am conversant with the customs and usages of said business throughout said State and the other States of the United States.

I aver that it is a common practice in said business and a well known fact among those engaged in the seed trade that seedsmen purchase seed from the owner or discoverer of a particular type of vegetable, flower or grain, and subsequently sell the product of such purchase as their own seed without reference to the name given thereto by the owner or discoverer

and that identical seeds annually appear on the various seed catalogues under various names.

That there is no universal custom to offer for sale and to sell any new and improved type under the name given thereto by the original discoverer or owner thereof without change of name.

Sworn to and subscribed } before me this 28th day } of January, 1908.	CHARLES R. STENGEL, <i>Manager Seed Dept.,</i> <i>Griffith & Turner Co.</i>
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ARMSTEAD M. WEBB,
Notary Public.

A similar affidavit was also signed by Benjamin W. Straughen, Seed Grower, County of Salem, State of New Jersey. Arthur E. Holland, Seedsman, County of Suffolk, State of Massachusetts. William C. Rickards, Seedsman, County of New York, State of New York. George R. Pedrick, Seed Grower, County of Salem, State of New Jersey. Hamilton G. Pedrick, Seed Grower, County of Salem, State of New Jersey. Thos. H. Hill, Seedsman, County of Philadelphia, State of Pennsylvania. Simeon F. Leonard, Seedsman, County of Cook, State of Illinois. John Charles Vaughan, Seedsman, County of Cook, State of Illinois. James B. Kidd, Grower and Seller. Henry C. Anthony, Seed Grower, County of Newport, State of Rhode Island. Frederick Williams, Seed Grower, County of Jefferson, State of New York. Alexander P. Dewar, Seedsman, County of Suffolk, State of Massachusetts. Warren W. Rawson, Seedsman, County of Suffolk, State of Massachusetts. John K. M. L. Farquhar, Seedsman, County of Suffolk, State of Massachusetts. Roland Bolgiano, Seedsman, City of Baltimore, State of Maryland. E. Stanley Brown.

IN THE
**Circuit Court of the United States for the
 Eastern District of Pennsylvania.**

IN EQUITY.

W. ATLEE BURPEE, TRADING AS W. ATLEE BUR-
 PEE & CO., A CITIZEN OF THE STATE OF PENNSYL-
 VANIA,

vs.

HENRY A. DREER, A CORPORATION OF THE STATE OF
 NEW JERSEY.

CITY OF PHILADELPHIA }
 STATE OF PENNSYLVANIA, } ss:

JOSEPH J. GOUDY, being duly sworn says: I am a Seedsman, have been employed by Henry A. Dreer for the past 18 years, and in the course of my business I meet a large number of Truckers who grow vegetables for market and am conversant with the different varieties of beans and I know the Dreer type of Lima Bean. Last year I planted the Fordhook Bush Lima offered by W. Atlee Burpee & Co., planted the same and carefully watched its growth in order to note any difference in it from the Dreer Bush Lima Bean. I found that the bush grew upright and produced large pods and beans, but they were of the same type as the Dreer Bush Lima Bean and I consider the "Fordhook" Bush Lima to be a perfected strain of the Dreer Bush Lima.

Sworn and Subscribed before }
 me this 25th day of }
 January 1908. } JOSEPH J. GOUDY.

JAMES H. WOLF,
Notary Public

Commission Expires Jan. 3, 1909.

IN THE
**Circuit Court of the United States for the
Eastern District of Pennsylvania.**

IN EQUITY.

W. ATLEE BURPEE, TRADING AS W. ATLEE BUR-
PEE & CO., A CITIZEN OF THE STATE OF PENNSYL-
VANIA,

vs.

“HENRY A. DREER,” A CORPORATION OF THE STATE
OF NEW JERSEY.

STATE OF MARYLAND, }
COUNTY OF PRINCE GEORGE. } ss.

C. P. CLOSE, being duly sworn, says, I have been engaged in experiment station work since December, 1895, and at the Maryland Agricultural Experiment Station, Prince George County, Maryland, since January 1, 1907, and am familiar with the different types of vegetables and tree fruits, and with the usages and customs of the trade in such vegetables and fruits. I am satisfied that it is a general custom among seedsmen to change the names of varieties of seeds or fruits introduced by one grower, and list them under new names in their catalogues, and this fact is clearly shown in the numerous publications of the Bureau of Plant Industry, United States Department of Agriculture at Washington.

Sworn to and subscribed }
before me this 28th day } C. P. CLOSE.
of January, A.D., 1908. }

W. HAMPTON HICKEY,
Notary Public.

IN THE
Circuit Court of the United States
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

W. Atlee Burpee, trading as "W. Atlee Burpee & Co.,"
a citizen of the State of Pennsylvania,
Complainant,

vs.

"Henry A. Dreer," a corporation of the State of New
Jersey, Defendant.

INJUNCTION AFFIDAVITS.

JAMES B. KINLEY,
JOSEPH DEF. JUNKIN,
JOHN G. JOHNSON,
Solicitors for Complainant.

IN THE
Circuit Court of the United States for the
Eastern District of Pennsylvania.

IN EQUITY.

W. ATLEE BURPEE, TRADING AS "W. ATLEE BUR-
PEE & COMPANY," A CITIZEN OF THE STATE OF
PENNSYLVANIA, *Complainant,*

US.

“HENRY A. DREER,” A CORPORATION OF THE STATE OF
NEW JERSEY, *Defendant.*

STATE OF PENNSYLVANIA,
CITY AND COUNTY OF PHILADELPHIA, } ss.

W. ATLEE BURPEE, having been duly affirmed, says:

"I am the Complainant in the above case residing in the Eastern District of Pennsylvania and have been in the seed business for over twenty-nine years, trading as "W. ATLEE BURPEE & Co." My main farms are at "FORDHOOK," in Bucks County, Pennsylvania, which name, "FORDHOOK," I adopted in 1888 and have continually used as my Trade Name, especially for designating new and improved varieties of seeds.

The Defendant, "HENRY A. DREER," is a corporation of the State of New Jersey, and carries on the same general business that I do.

For over twenty years it has been my annual custom to issue and distribute all over the civilized world a large

and handsomely illustrated catalogue of my various seeds and other products, at a cost (including also my advertisements in magazines and periodicals) of from \$50,000 to \$75,000, continually using my trade name of "FORDHOOK" therein.

In the year 1906, I purchased from one Henry Fish, of California, the exclusive right to two certain lima beans, which had been discovered by the said Fish in 1903, and were identified by Mr. Fish as No. 1 and No. 2. Mr. Fish had offered these beans for sale to other seedsmen throughout the United States, including, as I am informed and believe and aver, the Defendant herein, "HENRY A. DREER."

I paid to the said Fish the \$1,000 first cash payment mentioned in such contract, and also paid to him during the year 1907 the additional sum of \$348.; and by my contract with him (see Exhibit "A"), I have obligated myself to pay him the sum of \$1385.00 for the same in 1908.

Upon purchasing this bean, I named it "FORDHOOK BUSH LIMA BEAN," and during 1907 expended \$5000.00 in advertising the same under this name, and expect to spend the same amount in advertising it under this name for 1908, including my Catalogues which are now printed or in type.

This bean is a new type of bean growing upon a stiffly upright plant, instead of lying prostrate upon the ground. It produces an unusually large and heavy crop; both pods and beans are double the size and the beans are of an unusually desirable flavor, entirely distinct from that of any other "potato" lima bean.

This name of "FORDHOOK BUSH LIMA BEAN" was never before used by any one as descriptive of this or any other bean.

I have prepared and published the first edition of 300,000 copies of my Catalogues for 1908, (see Exhibit "C"), of which 95,000 copies have already been distributed. In this Catalogue I have devoted three pages to a description

of this same "FORDHOOK BUSH LIMA BEAN," with handsome cuts, while the front cover shows one reproduced by lithograph in color. In addition I have had printed 160,000 smaller Catalogues, illustrative and descriptive of this "FORDHOOK BUSH LIMA BEAN." The printing and distributing of these Catalogues cost over \$40,000, and I believe and aver that a large business would ordinarily result from the sale of this bean throughout the world, greatly exceeding the sum of \$2,000.

I have received a copy from the Defendant of its catalogue for the year 1908, (see Exhibit "F"), and I believe and aver that the same has already been widely distributed to the seed trade by the Defendant; and on page 27 of which, is offered and described a lima bean which the Defendant offers to the public under the name "PERFECTED DREER'S BUSH LIMA BEAN (Fordhook)," accompanied by a large illustration facing page 27, where the same name "Fordhook" occurs.

I aver that I had intended to offer this bean to all the wholesale seed dealers in the United States, but owing to a shortage in the crop grown for me by the said Fish, under the said contract (Exhibit "A"), I did not do so. Four dealers, however, viz. Messrs. C. C. Morse & Co., San Francisco, California, Arthur T. Boddington, of New York, the "Johnson Seed Company," of Philadelphia, and the said Defendant, "Henry A. Dreer," of Philadelphia, so urgently solicited as a favor from me that I would sell them wholesale some of this novelty, for cataloging and retail sale by them, that I agreed to do so, after being assured by them that they would sell the same at my retail price, and I then received from the said Defendant a letter, dated December 3, 1907, containing the following statement:

"We thank you for your offer of the two Bush Lima Beans. We however, will only catalogue the

one variety this year and we ask that you enter our order for two bushels of the Fordhook Bush Lima at price quoted, \$45.00, per bushel. We will offer the bean in the quantities and at prices named in your letter. We would appreciate it however, if you would give us an idea as to size your packet will be as we desire to conform with same."

I further aver that in the said Defendant's Catalogue (Exhibit "F") the name "FORDHOOK" does not appear except on page 27 thereof and in illustration facing said page.

I further aver that in the Catalogues for 1908 of the three other dealers to whom I agreed to sell the said beans, the same are advertised under their proper name of "FORDHOOK BUSH LIMA BEAN," and especially in the catalogue of the said "Johnson Seed Company," where great prominence is given to such name (see Exhibits "G" and "H").

I believe and aver that under the title of "PERFECTED DREER'S BUSH LIMA BEAN (Fordhook)" the Defendant intends this year to offer and sell to the public my said "FORDHOOK BUSH LIMA BEAN," as its discovery and property, wrongfully renaming the same as "PERFECTED DREER'S BUSH LIMA BEAN," with a wrongful appropriation of my said Trade name.

I further aver that it is the custom of the seed trade to give to the discoverer of, or to the exclusive purchaser of, any new or special or improved type of seed, the right to sell the same under his Trade name or under any Special name which he chooses, and that he thereby acquires the proprietary right in such Trade name or designated name in connection with such new variety or type; and that it is the custom of the said trade that no one else shall rename the same or sell the same under any other name than that given to it by the

discoverer or purchaser. I further aver that such custom, and the recognition thereof by the seed trade, forms a very large and valuable part of the assets and good-will of the business of all Seedsmen, and especially of my business, and is largely instrumental in inducing Seedsmen all over the world to experiment for new varieties of vegetables and grains.

I further aver that the Defendant did not discover or purchase, nor produce, nor has it any right in the said "FORDHOOK BUSH LIMA BEAN," excepting in so far as it may purchase the same from me, and in that case, under the aforesaid custom of the trade, it would have the right to sell the same only under the name that I had given it, and not under its own name. And I also aver that the Defendant has no right to the use of my said Trade name "FORDHOOK" in connection with the advertisement of its own alleged products.

I further aver that under its said advertisement, it has either endeavored to delude the public into believing that it has the right to use my trade name "FORDHOOK" in connection with its own name or else that it has acquired the right to re-name and to sell my "FORDHOOK BUSH LIMA BEAN" under its name of "PERFECTED DREER'S BUSH LIMA BEAN," which according to the aforesaid custom of the trade, it has no right to do.

I am informed and believe and aver that the Defendant has already sent out many thousands of its said Catalogues containing this advertisement, and contemplates sending out many thousands more in the immediate future.

I further aver that if the Defendant is not restrained by injunction from using my trade name "FORDHOOK" in connection with its own name and its own alleged products, and from re-naming my "FORDHOOK BUSH LIMA BEAN," and offering the same for sale under the name of "PERFECTED DREER'S BUSH LIMA BEAN" or any other name, except the name "FORDHOOK BUSH

LIMA BEAN," I will sustain great loss and damage, much exceeding \$2000.00, exclusive of interest and costs, as to which I have no adequate remedy at law.

I further aver that I am entitled to the sole and exclusive use of my trade name "FORDHOOK" and, under the said custom of the trade, entitled to the right to have said new type of bean, when offered to the public and sold by any other seed dealer, offered and sold only under the name "FORDHOOK BUSH LIMA BEAN," wherever and by whomsoever the same may be sold, and that the Defendant in offering to sell the same under its own name has unlawfully trespassed on my rights, and that I am entitled to a Mandatory injunction against it, compelling it to destroy its said Catalogues which it may have on hand and to call in and destroy such copies thereof as it has already issued, and that I am also entitled to an accounting of and Decree for the payment of the damages which I have sustained by reason of Defendant's aforesaid unlawful acts."

Affirmed and subscribed before
me this day of
January, 1908.

IN THE
Circuit Court of the United States for the
Eastern District of Pennsylvania.

IN EQUITY.

W. ATLEE BURPEE, TRADING AS W. ATLEE BURPEE
& CO., A CITIZEN OF THE STATE OF PENNSYLVANIA,
Complainant,

vs.

"HENRY A. DREER," A CORPORATION OF THE STATE
OF NEW JERSEY, *Defendant,*

STATE OF PENNSYLVANIA, }
COUNTY OF } *ss:*

HOWARD M. EARL being duly affirmed deposes and says:

"I am the business manager for W. Atlee Burpee, trading as W. Atlee Burpee & Co., the complainant above named, and I am thoroughly conversant with everything connected with the said business.

I have read the Bill and affidavit of the said W. Atlee Burpee in this case and I aver that I have knowledge as to all the facts therein set forth and that as therein averred they are true statements of all of the facts contained therein, and I desire to add further facts regarding the said matter which are within my own special knowledge.

I have been connected with the said firm of W. Atlee Burpee & Co. for over twenty years, and have been a close student of Horticulture and Agriculture during that time, and have traveled all over the United States and Europe in the pursuit of my business, inspecting growing crops, and investigating and observing new types and varieties

of such that may be offered to my firm. On May 14, 1906, Henry Fish of Carpinteria, California, wrote to the said W. Atlee Burpee & Co., stating that he was sending them three pods each of two new Bush Lima Beans, which he designated as Nos. 1 and 2, for a trial growth. In July, 1906, W. Atlee Burpee after his return from a trip to Mr. Fish's farm in California, asked me for information as to the trials of these beans and especially as to No. 1. I reported that the result of the trials showed that No. 1 was a distinct type of Bush Lima Bean, entirely different from anything before seen.

In September, 1906, I was instructed by W. Atlee Burpee to go to California and to personally hand Mr. Fish our bid for the Bush Lima Beans owned by Mr. Fish and designated by him as No. 1 and No. 2. I went to California and had an interview with Mr. Fish, who informed me that he had offered to sell these beans to different seedsmen throughout the country, and among others he said he had offered them to "Henry A. Dreer" of Philadelphia, the defendant herein, and that he would sell the same to the highest bidder. As Mr. Burpee's instructions to me were to purchase the beans at any reasonable price, and especially to purchase No. 1, I bid a price that I understood was higher than that bid by any other seedsman, and Mr. Fish accepted my offer and sold to W. Atlee Burpee & Co. the exclusive right to these Lima Beans, Nos. 1 and 2. (See Exhibit "A.")

This Bean, No. 1, was named by W. Atlee Burpee & Co. "FORDHOOK BUSH LIMA BEAN," which name "FORDHOOK" I aver is the trade name of W. Atlee Burpee & Co. and has been used by them for many years, and is known as such by seedsmen all over the United States, and is especially used by the said W. Atlee Burpee & Co. to designate new and special varieties or types of seed which they have acquired the exclusive right to.

I believe and aver that the "FORDHOOK BUSH LIMA BEAN" is the same bean which is being offered for sale

by "Henry A. Dreer," the defendant herein, in its catalogue for 1908, under the name of "PERFECTED DREER'S BUSH LIMA BEAN."

I further aver that according to the usage and custom of the seed trade the discovery or purchase of a new type or variety of seed gives to the discoverer or purchaser thereof exclusively the right to name or to rename said seed, under which name alone it is the custom of the trade that any other seed dealer shall market it; and that no other than the discoverer or purchaser has any right to rename the same or to sell the same by any other name, and I further aver that this custom of the seed trade giving such right to such discoverer or purchaser is a valuable part of the good-will of any firm of seedsmen, and any violation thereof by a competitor would cause serious loss.

I further aver that it is the general custom of Seed dealers to list seeds discovered or purchased by other growers in their Catalogues, when they offer them for sale, under the name originally given to them by the discoverer, or purchaser from the discoverer thereof, and never before have I known an instance where a house in the trade had supplied seed of a new variety to one of their competitors and have that competitor rename the variety; and in proof of such general custom I aver that I have had examined and marked over 350 copies of Catalogues issued by dealers all over the U. S., covering the past twenty years, containing lists of seeds of other dealers, so properly offered for sale under the original name, in pursuance of said general custom, which said Catalogues are now at Fordhook; but owing to their great number and bulk I did not consider it practicable to produce them as exhibits in this case, but will produce the same if your Honorable Court so orders."

Affirmed and subscribed to
before me this day of
January, A.D., 1908.

IN THE

**Circuit Court of the United States for the
Eastern District of Pennsylvania.**

IN EQUITY.

W. ATLEE BURPEE, TRADING AS W. ATLEE BURPEE
& CO., A CITIZEN OF THE STATE OF PENNSYLVANIA,
Complainant,

vs.

"HENRY A. DREER," A CORPORATION OF THE STATE OF
NEW JERSEY, *Defendant.*

STATE OF PENNSYLVANIA, }
COUNTY OF } ss:

EDWARD J. WOBACK being duly sworn deposes and says:

"I am Farmer for the firm of W. Atlee Burpee & Co. the complainant above named, at their trial grounds at Fordhook Farms, Bucks County, Pa., and have been in said position for the past eight years, my duties being the overseeing of all cultivating done at Fordhook Farms.

During the year 1906, among other varieties I planted for them two new varieties of Bush Lima Beans which came from Mr. Fish, California, and designated as No. 1 and No. 2.

During the past season, 1907, I from time to time, inspected the different trials of different varieties and types of Bush lima beans, of which there were fourteen different ones, including the "FORDHOOK BUSH LIMA BEAN,"

and the latter type was so distinct from all other Bush Lima Beans, even in appearance, that the plant could easily be recognized and picked out at a distance. The plants of the "FORDHOOK BUSH LIMA BEAN" make an upright growth with foliage of a different type from all other Bush Lima Beans, the pods being larger and the clusters produced more abundant.

I aver that the name "Fordhook" is in constant use by the firm of W. Atlee Burpee & Co. as a trade name and to designate special new types or varieties of seeds."

Sworn and subscribed to before
me this day of January
A. D., 1908.

IN THE

**Circuit Court of the United States for the
Eastern District of Pennsylvania.**

IN EQUITY.

W. ATLEE BURPEE, TRADING AS W. ATLEE BURPEE
& CO., A CITIZEN OF THE STATE OF PENNSYLVANIA,
Complainant,

vs.

"HENRY A. DREER," A CORPORATION OF THE STATE OF
NEW JERSEY, *Defendant,*

STATE OF PENNSYLVANIA, }
COUNTY OF } ss.

E. DILLWYN DARLINGTON having been duly affirmed
deposes and says:

"I am an expert seed grower and am superintendent of
trials for the firm of W. Atlee Burpee & Co. the com-
plainant in this case at Fordhook farms in Bucks County,
Pennsylvania. I have been in this business for 20 years.

In September, 1905, when inspecting crops of seed
beans grown by Henry Fish at his California farm, Mr.
Fish called my attention to a new variety of Bush Lima
Bean which he had under development, and which he
proposed disposing of to the highest bidder when he had
grown a sufficient amount of same. Fish stated that he
regarded these beans as the most valuable stock he had
ever grown and that he expected to receive a large sum

for them. Early in the following Spring Fish sent three pods of these beans to the said W. Atlee Burpee & Co., stating that these were to be grown on the trial grounds of W. Atlee Burpee & Co. at Fordhook, and especially stipulated that the beans grown therefrom should be returned to him (Fish) at the end of the season.

These beans were sown at Fordhook, as requested by Fish, and the sample sent as No. 1 especially attracted my attention, as it was entirely distinct from any other type of Bush Lima Bean that I had ever seen. This No. 1 bean was identical with the new type named and introduced by W. Atlee Burpee & Co. as "FORDHOOK BUSH LIMA BEAN" after he had purchased all the stock of the same from the said Fish; and was identical in every respect with the samples of the stock of "FORDHOOK BUSH LIMA BEAN" that were grown on the trial grounds at Fordhook in 1907, which samples were taken from the crop of these beans purchased from Fish and used by the said W. Atlee Burpee & Co. in filling orders for their "FORDHOOK BUSH LIMA BEANS" during the year 1907.

I have been in charge of W. Atlee Burpee & Co.'s trial grounds at Fordhook since 1888, and I am familiar with the growth, appearance and table qualities of all the types and all varieties of Lima beans on the market; and I aver that the "FORDHOOK BUSH LIMA BEAN" is a distinct and entirely new type and variety, different from any other type or variety ever grown by any one. I further aver that in any comparison between the "KUMERLE (THORBURN)" or "DREER'S BUSH LIMA BEAN," both of which are synonymous names for the same variety, and Burpee's "FORDHOOK BUSH LIMA BEAN" the two first named are entirely different and distinct types of bean from the "FORDHOOK BUSH LIMA BEAN" in every respect, except a resemblance in the form of pods, and the manner in which the beans are crowded together in the pod. In growth the "FORDHOOK BUSH LIMA BEAN" is a stiffly

erect plant, differing from the "KUMERLE" or "DREER'S BUSH LIMA BEAN" which grow prostrate on the ground, the branches of the latter resembling short vines which spread out flatly on the surface of the ground. Both the pods and the beans of the "FORDHOOK BUSH LIMA BEAN" are much larger than the pods of the "KUMERLE" or "DREER'S BUSH LIMA BEAN," and with one or two more beans to the pod than the others. In length of pod the "FORDHOOK BUSH LIMA BEAN" measures from 4 to 5½ inches in length while the "KUMERLE" or "DREER'S BUSH LIMA BEAN" measure only 2½ to 3 inches.

The flavor of the "FORDHOOK BUSH LIMA BEAN" is also entirely different from that of the other varieties named.

I further aver that the name "FORDHOOK" is a Trade Name adopted by the said W. Atlee Burpee & Co. in 1888, and used by them continuously ever since, especially in introducing new varieties of superlative merit such as this new bean, and that such name "FORDHOOK" is a valuable part of the good-will of the business of the said firm, W. Atlee Burpee & Co."

Affirmed and subscribed to before
me this day of January
A. D., 1908.

